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EXAMINER				
LEIVA, FRANK M				
ART UNIT		PAPER NUMBER		
3714				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

uspto@slwip.com  
request@slwip.com

### Office Action Summary

**Application No.**

10/764,739

**Applicant(s)**

CONNELLY, MICHAEL P.

**Examiner**

FRANK M. LEIVA

**Art Unit**

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 February 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SI/200)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date 02/12/2010

## DETAILED ACTION

### Acknowledgements

1. The examiner acknowledges amendment to claim 19 only in applicant's submission filed 12 February 2010.

### Response to Arguments

2. Applicant's arguments, see Remarks, filed 12 February 2010, with respect to the 101 rejections have been fully considered and are persuasive. *The 35 USC § 101 rejections of claims 1-37 have been withdrawn.*
3. Applicant's arguments filed 12 February 2010, regarding 35 USC § 102 rejections have been fully considered but they are not persuasive.
4. Regarding the last argument on pages 9 and 10 of applicant's remarks; "For example claim 1 recites an audio module that is operable to select audio element tracks that are played at the same time, wherein the "selected audio element tracks comprise two or more instruments played in the same key in synchronization." Claim 37 recites similar language. The Office Action states that Hecht, at paragraphs [0009], [0043] and [0050] discloses the recited subject matter. Applicant respectfully disagrees with this interpretation of Hecht. Paragraphs [0009] and [0043] do not make any reference to keys or selecting track elements having the same key. Paragraph [0050] references keys, but rather than selecting track elements having the same key, Hecht discloses the opposite, that a track having a different key is selected or created."

"[0009] The sound change code includes instructions which direct the CPU how to generate, store, interpret and use the data stored in sound change random access memory (RAM). Specifically, the sound change code includes instructions which direct the CPU to: (a) play a primary sound recording when a predetermined game event or input event occurs; (b) play a variant sound recording (stored in a variant sound file) when a player makes a predetermined input; and (c) stop the primary sound recording. The particular primary sound recordings and variant sound recordings which the CPU plays can be predetermined or randomly determined."

“[0043] Sound change code 136 includes instructions which direct the CPU 102 how to generate, store, interpret and use the data stored in sound change random access memory (RAM) 138. Specifically, sound change code 136 includes instructions which direct the CPU 102 to: (a) play a primary sound recording when a predetermined game event or input event occurs; (b) play a variant sound recording when a player makes one of a plurality of predetermined inputs; and (c) stop the primary sound recording. The particular primary sound recordings and variant sound recordings which CPU 102 plays may be predetermined. Alternatively, CPU 102 can randomly determine which primary sound recording and variant sound recording to play, preferably through use of a random outcome generator.”

“[0052] In addition, when the CPU makes a change from playing an initial sound recording to a variant of that sound recording, the change can be timed so that the transition is not on-beat, or the change be timed so that the variant sound recording is generated on-beat with the initial sound recording. In the latter case, the gaming device, in one embodiment, can include a suitable software metronome or metronome program which the CPU uses to make sound changes on-beat. Here, the CPU reads game state data on code-driven metronome ticks determined by a predetermined check-back rate. Using the check-back rate, the CPU detects sound causing events and simultaneously plays a new sound recording on-beat with an initial recording.”

Both paragraphs [0009] and [0043] teach of the module that determines or selects audio tracks (sound recordings) to be played. At the same time or simultaneously see paragraph [0052];

“[0005] When the gaming device makes a sound recording change in response to a player input, the gaming device alters the entire sound recording or one or more of the musical variables of that sound recording. A musical variable can include, but is not limited to, any changeable factor which affects the sound or quality of a sound recording, including, without limitation, musical key,

musical tempo, musical style, musical melody, musical jump to a different section of a song or composition, musical beat, upbeat changes, downbeat changes, musical keys, musical notes, musical chords, musical sample rate, musical pitch, musical crescendo singing voice (e.g., a change from the voice of one singer to the voice of a different singer), syncopation, mode, scale or instrument. A musical skip can include a change or skip from one section of a sound recording to a different section of the sound recording.

“[0050] The change in play from one sound recording to another can include any suitable change in any musical variable. In the examples illustrated in **FIGS. 4A to 4D**, the change involves change in musical key, tempo, style and melody, respectively. In the example illustrated in **FIG. 4A**, when the gaming device is playing a predetermined song in key C, if a player makes input W, the gaming device plays the same song in key D and then stops playing the song in key C. In the example illustrated in **FIG. 4B**, when the gaming device is playing a predetermined song in a predetermined tempo, if a player makes input Y, the gaming device plays the same song in a tempo increased by thirty percent and then stops playing the song in the original tempo. In the example illustrated in **FIG. 4C**, when the gaming device is playing a predetermined song in a swing style, if a player makes input W, the gaming device plays the same song in a bossa nova style and then stops playing the song in the swing style. In the example illustrated in **FIG. 4D**, when the gaming device is playing a predetermined song in a melody A, if a player makes input Z, the gaming device plays the same song in a melody E and stops playing the song in the melody A.”

Paragraph [0005], teaches of the use of different instruments as a variant or change or addition to the sound track, and paragraph [0050] teaches how each track is played at the same key and when the key is changed the entire track is made to change to the same key. So, Hecht contains a track formed of several tracks of different instruments and vocalizations all played in the same key, which can also be changed.

5. Regarding the argument on page 10 of applicant's remarks; "*Applicant thanks the Examiner for the clarification of the Examiner's position provided in the "Response to Arguments" portion of the Office Action. Applicant respectfully disagrees that paragraph [0052] discloses the simultaneous play of two track in view of the language at the beginning of paragraph [0052] that specifically states that the "CPU makes a change from playing an initial sound recording to a variant of that sound recording." It is Applicant's view that the simultaneous actions referred to are detecting sound causing events and playing a new sound recording that is on-beat with the beat of the initial recording such that the new sound recording has the same beat as the initial recording.*" The examiner review of paragraph [0052];

"[0052] In addition, when the CPU makes a change from playing an initial sound recording to a variant of that sound recording, the change can be timed so that the transition is not on-beat, or the change be timed so that the variant sound recording is generated on-beat with the initial sound recording. In the latter case, the gaming device, in one embodiment, can include a suitable software metronome or metronome program which the CPU uses to make sound changes on-beat. Here, the CPU reads game state data on code-driven metronome ticks determined by a predetermined check-back rate. Using the check-back rate, the CPU detects sound-causing events and simultaneously plays a new sound recording on-beat with an initial recording."

Herein the paragraph explains one embodiment and summarizes a second use for the check-back rate command when a new sound (track) is played over the initial recording (track). So, while Hecht's invention can stop play and start another, it also adds new sounds to an already playing track.

6. For clarification a **track** is identified as a recorded segment, (e.g. a song, a variant of a song, a piece of music, a piece music played by a single instrument, a single sound produced by an instrument group of instruments, vocalized or a combination thereof) as long as is a previously recorded sound file.

7. Regarding claim 19; the amended now reflects the same content as claims 1 and 37 and is covered by the same response to arguments above.

8. Regarding the dependent claims, no separate arguments were furnished other than their dependency to their independent claims, so they are deemed proper rejections.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

10. **Claims 1-37 are rejected under 35 U.S.C. 102(a) as being anticipated by Hecht et al (US 2003/0073489 A1).**

11. **Regarding claims 1, 19 and 37;** Hecht discloses a computerized gaming system, comprising: a gaming module, comprising a processor and gaming code which is operable when executed on the processor to conduct a wagering game on which monetary value can be wagered, (¶ [0004]); and an audio module, the audio module operable to play an audio track, the audio track comprising a plurality of selected audio element tracks that are played at the same time to create the played audio track, (¶ [0055]), wherein the selected audio element tracks comprise two or more instruments played in the same key in synchronization and are selected by the wagering game machine based on at least one of random selection and a randomly ordered list, (¶ [0009, 0043]), where the sound change Random access memory is considered to be a randomly ordered list, and (¶ [0050]) shows that multiple instruments are played and that the music is played synchronized and same key.

**12. Regarding claims 2 and 20;** Hecht discloses wherein each audio element track comprises one or more instruments not present in the other audio element tracks, (¶ [0005-0007]), wherein the system can make changes to the track by changing instruments or swapping voice from different singers means that the system sound files include instrument sound separate from voice sounds.

**13. Regarding claims 3 and 21;** Hecht discloses wherein at least one audio element track comprising one or more specific instruments comprises multiple phrases independently selectable for playback to create the played audio track, (¶ [0005]), where the changes include skipping to different section of the song, meaning that the songs are made of partitions or sections (phrases in the song).

**14. Regarding claims 4 and 22;** Hecht discloses wherein the multiple phrases are played back out of sequence to create the played audio track, (¶ [0043]), wherein if they are played randomly, they are out of sequence.

**15. Regarding claims 5 and 23;** Hecht discloses wherein the phrase sequence played back to create the played audio track comprises a randomly selected phrase order, (¶ [0043]), wherein if they are played randomly.

**16. Regarding claims 6 and 24;** Hecht discloses wherein the phrase sequence played back to create the played audio track is provided by an ordered list of phrases, (¶ [0005 and 0043]), wherein the sound change random access memory is considered to be a list of audio track to be played.

**17. Regarding claims 7 and 25;** Hecht discloses wherein the phrase sequence played back to create the played audio track comprises a phrase sequence selected based on priority weighting assigned to the phrases, (¶ [0038]), including primary sound files which are used to start the sound or give background to the played track.

**18. Regarding claims 8 and 26;** Hecht discloses wherein two or more audio element tracks are randomly combined to create the played audio track, (¶ [0052]), whereas the tracks are played simultaneously and on-beat with the initial recording.

**19. Regarding claims 9 and 27;** Hecht discloses, wherein two or more audio element tracks are combined according to a predetermined list of audio element track combinations, (¶ [0052]), whereas the tracks are played simultaneously and on-beat with the initial recording, these audio elements taken from the sound change random access memory list.

**20. Regarding claims 10 and 28;** Hecht discloses wherein two or more audio element tracks are selected and combined to produce the played audio track, the selection comprising evaluation of priority weighting of the various audio element tracks, (¶ [0008 and 0038]), where there are specific instructions to follow priorities according to game changes and primary sounds.

**21. Regarding claims 11 and 29;** Hecht discloses wherein the audio element tracks are played back repeatedly, and wherein the length of at least two of the audio element tracks are of different length, (¶ [0042]), wherein if the CPU determines the duration of play, means that audio elements are not limited to be of the same duration.

**22. Regarding claims 12 and 30;** Hecht discloses wherein the played audio track further comprises a portion that is not a combination of audio element tracks, (¶ [0038]), where the primary sound files appear to be plain files to be changed and combined, but for the start comprise a portion that not yet altered.

**23. Regarding claims 13 and 31;** Hecht discloses wherein at least one of the plurality of audio element tracks is played using at least one randomized parameter, the parameters including at least one of volume, panning, reverb, equalization, compression, distortion, flange, and phase parameters, (¶ [0005]).

- 24. Regarding claims 14 and 32;** Hecht discloses wherein the audio element phrases are sorted into at least two subgroups, (¶ [0048]).
- 25. Regarding claims 15 and 33;** Hecht discloses wherein the audio elements in the phrase subgroups are grouped by compatibility with other audio element phrase groups, (¶ [0048]).
- 26. Regarding claims 16 and 34;** Hecht discloses wherein the audio element tracks have different sampling rates, (¶ [0005]).
- 27. Regarding claims 17 and 35;** Hecht discloses wherein at least one of the audio element tracks comprises music, (¶ [0038]).
- 28. Regarding claims 18 and 36;** Hecht discloses wherein at least one of the audio element tracks comprises sound effects, (¶ [0038]).

***Examiner's Note***

**29.** Examiner has cited paragraphs and figures in the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FRANK M. LEIVA whose telephone number is (571)272-2460. The examiner can normally be reached on M-Th 9:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter D. Vo can be reached on (571) 272-4690. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

FML  
06/02/2010.

/Peter D. Vo/  
Supervisory Patent Examiner, Art Unit 3714